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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,854	10/17/2003	Ralph M. Pivonka	2-1271-013	9571
803	7590	02/11/2008		
STURM & FIX LLP 206 SIXTH AVENUE SUITE 1213 DES MOINES, IA 50309-4076			EXAMINER MCKANE, ELIZABETH L.	
			ART UNIT	PAPER NUMBER
			1797	
			MAIL DATE	DELIVERY MODE
			02/11/2008 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/687,854

**Applicant(s)**

PIVONKA, RALPH M.

**Examiner**

Leigh McKane

**Art Unit**

1797

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17, 19 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 is/are allowed.
- 6) ☒ Claim(s) 17 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5 December 2007 has been entered.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 17 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Specifically, claim 17 contains the new limitation "said burner pointing primarily more downwardly than horizontally to cause the flame to extend more downwardly than horizontally from the burner". The original disclosure does not support this limitation. In fact, the specification discloses that "each of the plurality of burners **610** is oriented so that a flame emanating therefrom is directed in a substantially horizontal direction." This is also evidenced by Figure 6 specifically. No where does the disclosure teach or suggest to orient the burners

such that “said burner pointing primarily more downwardly than horizontally to cause the flame to extend more downwardly than horizontally from the burner”.

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takeshi et al. (JP 10-75704) in view of Opfel (US 2003/0192485).

Takeshi et al. teaches a portable burner for weed burning and the destruction of pathogenic bacteria. See English abstract. The apparatus of Takeshi et al. includes a flamer having a plurality of burners **33** situated under hood **4**, the burners pointing primarily downwardly. The hood **4** is disposed completely over the top of the flame emitted from the burner **33**. See Figures 1 and 3. A hitch **1** attaches the flamer to a prime mover **T**. Although

Takeshi et al. discloses use of the portable burner for the destruction of soil microorganisms, the reference is silent with respect to use of the device for sterilizing poultry litter.

Opfel teaches a method of sterilizing poultry litter wherein a flamer is employed to heat accumulated poultry litter such that it is sterilized. See paragraphs [0032], [0092], and [0106]. Furthermore, Opfel discloses that the *in situ* treatment of litter may be accomplished with a *portable*, gas-powered burner or torch system.

It would have been obvious to one of ordinary skill in the art to employ the portable, gas-powered burner of Takeshi et al. to sterilize poultry litter, as one would have expected the burner of Takeshi et al. to bring the litter of Opfel to a sterilizing temperature and as the burner of Takeshi et al. is disclosed to be capable of destroying microorganisms. The results of using the burner of Takeshi et al. in this manner are apparent and expected.

7. Claims 17 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salooja (GB 1,567,505) in view of Takeshi et al. and Opfel.

Salooja teaches a method and apparatus for burning an agricultural surface using mobile, enclosed flamer. The flamer includes skids **15**, a hood **11**, and a plurality of burners **19** underneath the hood. The method includes transporting the flamer to a location where the flames are contained within the hood. See page 2, lines 76-79. The flamer is pulled by a tractor and attached thereto by three-point hitch **60,61**. See page 4, lines 5-19. As exemplified in Figure 1, the flame direction is substantially horizontal (i.e. the burner is at an angle approximately 25° from horizontal), not primarily downwardly oriented. Nor does Salooja teach the use of the flamer for the sterilization of poultry litter.

Takeshi et al. discloses a similar device and method wherein the flame emitted by burner 33 and contained within hood 4 is pointed primarily more downwardly than horizontally. See Figures 1 and 3. It would have been obvious to one of ordinary skill in the art to modify the angle of the Salooja burner in the manner of Takeshi et al., as Takeshi et al. evidences that a downwardly pointing burner is more capable of affecting pathogens, seeds, and weeds *within* the soil, as opposed to only on the *surface* of the soil.

Opfel teaches a method of sterilizing poultry litter wherein a flamer is employed to heat accumulated poultry litter such that it is sterilized. See paragraphs [0032], [0092], and [0106]. Furthermore, Opfel discloses that the *in situ* treatment of litter may be accomplished with a *portable*, gas-powered burner or torch system.

It would have been obvious to one of ordinary skill in the art to employ the portable, gas-powered burner of Salooja to sterilize poultry litter, as one would have expected the burner of Salooja to bring the litter of Opfel to a sterilizing temperature. Note that Takeshi et al. further discloses a similar burner to be capable of destroying microorganisms. The results of using the flamer of Salooja in this capacity are apparent and expected.

***Allowable Subject Matter***

8. Claim 19 is allowed.

***Response to Arguments***

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Friday (5:30 am-2:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leigh McKane/  
Primary Examiner, Art Unit 1797

elm  
4 February 2008

